



# *The Human Rights Advisory Panel*

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## **DECISION**

**Date of adoption: 6 April 2012**

**Case No. 61/10**

**Nada MLADENović**

**against**

**UNMIK**

The Human Rights Advisory Panel, sitting on 6 April 2012,  
with the following members taking part:

Mr Marek NOWICKI, Presiding Member  
Mr Paul LEMMENS  
Ms Christine CHINKIN

Assisted by  
Mr Andrey ANTONOV, Executive Officer

Having considered the aforementioned complaint, introduced pursuant to Section 1.2 of UNMIK Regulation No. 2006/12 of 23 March 2006 on the Establishment of the Human Rights Advisory Panel,

Having deliberated, including through electronic means, in accordance with Rule 13 § 2 of its Rules of Procedure, decides as follows:

### **I. PROCEEDINGS BEFORE THE PANEL**

1. The complaint was introduced on 30 March 2010 and registered on 1 April 2010.
2. On 20 April 2011, the Panel requested information from the Kosovo Property Agency (KPA). The KPA responded on 22 April 2011.
3. On 4 August 2011, the Panel communicated the case to the Special Representative of the Secretary-General (SRSG), for UNMIK's comments on the admissibility of the complaint.

4. On 5 September 2011, the SRSG provided his response.

## **II. THE FACTS**

5. The complainant is a former resident of Kosovo currently living in Serbia.
6. The complainant states that she is the owner of a commercial real estate located in Ferizaj/Uroševac, and that the property was illegally occupied by a person known to the complainant. The complainant informs the Panel that on 18 August 2006 she filed a claim with the Kosovo Property Agency (KPA) for recognition of her ownership right over the property.
7. The history of the complainant's claim is available on the KPA's website. It shows that the claim registration was completed on 18 August 2006, the claim was published on 16 February 2007, the KPA received the respondent's reply on 16 July 2007, the reply interview with the respondent was conducted on 30 June 2008, and the notification process was completed on 28 December 2010. The status of the claim is shown as "notification completed".
8. On 22 April 2011, the KPA clarified that it had erred in the original notification of the claim, which was done on 4 June 2007. Therefore, the property was re-notified through publication on 28 December 2010. The claim is currently being processed.

## **III. THE COMPLAINT**

9. The complainant complains about the duration of the proceedings relating to her property before the KPA. In this respect she can be deemed to invoke a violation of the right to a decision by a court within a reasonable time, in the sense of Article 6 § 1 of the European Convention on Human Rights (ECHR) and her right to property, guaranteed by Article 1 of Protocol No. 1 to the ECHR.

## **IV. THE LAW**

10. Before considering the case on its merits the Panel has to decide whether to accept the case, taking into account the admissibility criteria set out in Sections 1, 2 and 3 of UNMIK Regulation No. 2006/12 of 23 March 2006 on the Establishment of the Human Rights Advisory Panel.

### **A. Whether all available avenues have been exhausted**

11. The SRSG raises a first objection to the admissibility of the complaint, based on the non-exhaustion of available remedies. According to the SRSG, the complainant's claim is still pending with the KPA and therefore the matter is not yet finalised. As long as the claim is still subject to the KPA claims process, the complainant cannot be said to have made use of all available avenues.
12. Section 3.1 of UNMIK Regulation No. 2006/12 provides that the Panel may only deal with a matter after it has determined that all other available avenues for review of the alleged violation have been pursued.

13. The Panel notes that the complaint is about the length of the proceedings. Such complaints can be brought before it, even before the termination of the proceedings in question (see, with respect to applications to the European Court of Human Rights (ECtHR), *e.g.*, ECtHR, *Biçer v. Turkey*, no. 19441/04, judgment of 20 July 2010, § 20). The Panel indeed fails to see how the fact that the proceedings are still pending can remedy the alleged violation of Article 6 § 1 of the ECHR stemming from the duration of the proceedings (see ECtHR, *Todorov v. Bulgaria*, no. 39832/98, decision of 6 November 2003).
14. The SRSG has not indicated any specific legal remedy available to the complainant with regard to the duration of the proceedings. For its part, the Panel does not see any such remedy.
15. The Panel therefore concludes that the complaint cannot be rejected for non-exhaustion of available avenues within the meaning of Section 3.1 of UNMIK Regulation No. 2006/12. It dismisses the first objection of the SRSG.

#### **B. Whether the complaint is not manifestly ill-founded**

16. The SRSG raises a second objection to the admissibility of the complaint. He indicates that the period under review begins not before August 2006 and ends on 31 December 2008, in accordance with Section 22 of UNMIK Regulation No. 2006/50 of 16 October 2006 on the Resolution of Claims Relating to Private Immovable Property, including Agricultural and Commercial Property. According to that provision, Regulation No. 2006/50 remained in force until 31 December 2008. UNMIK's oversight of the KPA operations ceased at that date. According to the SRSG, the KPA took various procedural steps in processing the complainant's claim during this period. He argues that there was no violation of the right to a fair trial within a reasonable time.
17. Section 3.3 of UNMIK Regulation No. 2006/12 provides that the Panel shall declare inadmissible any complaint which it considers, among other things, manifestly ill-founded. The Panel understands the SRSG's objection as being based on that ground of inadmissibility.
18. The Panel notes that with regard to UNMIK's administrative control of the KPA, the UN Secretary-General in his report to the United Nations Security Council on the Interim Administration Mission in Kosovo dated 17 March 2009, states that as UNMIK's authority over the KPA was not extended after 31 December 2008, the Kosovo authorities and an international director appointed by the International Civilian Representative/European Union Special Representative assumed full operational control of the KPA. Thereafter, the KPA operated in accordance with legislation adopted by the Assembly of Kosovo (S/2009/149, § 24; see Human Rights Advisory Panel (HRAP), *Kušić*, no. 08/07, opinion of 15 May 2010, § 51; HRAP, *Felegi*, no. 32/08, decision of 20 January 2012, § 43).
19. It follows, as the Panel already considered in *Kušić* (cited in § 18 above, at § 52) and in *Felegi* (cited in § 18 above, at § 44), that from 31 December 2008, UNMIK can no longer be held responsible for acts or omissions imputable to the KPA.
20. Insofar as the period between 18 August 2006 and 31 December 2008 is concerned, it appears that during that period the claim was published on 16 February 2007 and

notified on 4 June 2007, that the respondent replied to the KPA on 16 July 2007 and that he was interviewed by the KPA on 30 June 2008 (see § 7 above).

21. Taking into account the high number of claims filed with the KPA (41,892 claims, of which 27,316 have been decided by now)<sup>1</sup>, the Panel does not consider that during that period there was a delay of such a length that it was unreasonable. The Panel therefore holds this part of the complaint, with respect to the said period, to be manifestly ill-founded within the meaning of Section 3.3 of UNMIK Regulation No. 2006/12.
22. Insofar as the period after 31 December 2008 is concerned, the complaint falls outside the jurisdiction *ratione personae* of the Panel (see § 19 above).

**FOR THESE REASONS,**

The Panel, unanimously,

**DECLARES THE COMPLAINT INADMISSIBLE.**

Andrey ANTONOV  
Executive Officer

Marek NOWICKI  
Presiding Member

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<sup>1</sup> Information from the KPA official website: [http://www.kpaonline.org/ClaimsTotalDecided\\_caseload.asp](http://www.kpaonline.org/ClaimsTotalDecided_caseload.asp)